from Japan to go to South America. In Japan they accepted the goods, the subject of the two charges, from a person to be delivered to another person at the port of Santos in South America. The existence of these goods on the boat was not known to the captain of the ship. None of them appeared in the ship's manifest or in the list of dutiable goods in the possession of the crew signed by each of them. On 21st December, 1961, the ship called at Port Swettenham and these goods were found by the Customs hidden in the cofferdam tank in the engine room. The two appellants each made a confession admitting possession of these goods but stating that they were not meant to be imported into Malaya as they were to be delivered to someone in Santos.

On these facts the two accused were jointly convicted of two offences, of being in possession of uncustomed goods contrary to section 131(1)(d) of the Customs Ordinance No. 42 of 1952.

Inche' Lall Singh, for the appellants, argued that as the goods had not been imported and were *bona fide* in transit, the conviction was wrong.

I have considered this matter with some care and have come to the conclusion that the appeal should be dismissed.

"Import" means to bring into the Federation by sea, but according to the proviso to the definition of "import", goods *bona fide* in transit shall not be deemed to be imported. This is however subject to the important qualification "unless they are or become uncustomed goods", in which event they become imported goods.

But in any event there is no need to consider whether or not the goods have been imported, because all the prosecution need prove are: (1) possession and (2) the offending goods were uncustomed goods. Possession is admitted, but were the goods uncustomed? "Uncustomed goods" means goods in respect of which a breach of the provisions of the Ordinance or of any subsidiary legislation made thereunder has been committed. All these definitions are in section 2. Section 43 provides "if goods, other than *bona fide* ship stores, are found by a proper officer of Customs in any vessel in territorial waters and such goods are not correctly accounted for in the manifest or other documents which ought to be on board such vessels, then such goods shall be deemed to be uncustomed goods....." Sub-section (3) of section 105 provides "if any goods be found concealed on board any vessel or aircraft, they shall be deemed to be uncustomed goods."

These two presumptions are irrebuttable, but it is doubtful if section 43 applies as it is not clear in what document which ought to be on board the vessel the offending goods should have been accounted for. But section 105(3) certainly applies and there is no doubt that the goods are uncustomed goods because they were found concealed on board the boat, even though it is undisputed that the appellants did not mean to import them into Malaya.

Possession being admitted, an irrebuttable presumption having arisen that the offending goods were uncustomed goods and the appellants having elected to say nothing, they were in my view rightly convicted and I accordingly dismiss their appeal.

As regards sentence, Inche' Lall Singh suggested that as the appellants were foreigners who could not pay their fine it would be futile to feed them at the taxpayer's expense and I might therefore reduce the term of imprisonment in lieu. On the facts of this case, I see no reason to interfere, the only concession I make to the appellants being transients is to make the imprisonment in lieu, effective from the date of their arrest.

Appeal dismissed.

Solicitors: *Lovelace & Hastings.*

LOW SWEE FONG v. GAMMON (MALAYA) 1959 LTD.

[O.C.J. (Wee Chong Jin J.) June 22, 1962]

[Singapore — Suit No. 72 of 1962]

Workmen's Compensation Ordinance (Cap. 157), s.20(a) — "Recover" — Partial recovery of workmen's compensation — Whether bar to recovery of damages against 3rd party.

Damages — Serious personal injuries — Quantum of damages.

The plaintiff, a 52-year old lorry driver, was seriously injured by a motor van driven by a servant of the defendants, and as a result of the accident he was permanently incapable of working. The defendants admitted negligence but denied liability on the ground that the plaintiff had recovered compensation payable under the Workmen's Compensation Ordinance. It was urged by the defendants that partial recovery of workmen's compensation was a bar to recovery of damages against a third party.

Held: there was no evidence that the moneys the plaintiff received from his employer were received by him as workmen's compensation payments.

Obiter: the word "recover" in section 20 of the Workmen's Compensation Ordinance should be construed as recover as a whole and not in part.

Quantum of damages considered.

[**Editorial Note:** Appeal in this case was discontinued.]

Cases referred to:—

(1) *Day* v. *Furnival & Co. Ltd. & Anor.* 41 B.W.C.C. 319.
(2) *Aldin* v. *Stewart* 1916 S.C. 13.
(3) *Reid* v. *Stevenston* 21 B.W.C.C. 576.
(4) *Smith* v. *The Commonwealth Oil Refineries Ltd.* 60 C.L.R. 141.

SUIT.

Denis Murphy for the plaintiff.

P. Coomaraswamy for the defendants.

Cur. Adv. Vult.

Wee Chong Jin J.: The plaintiff was seriously injured by a motor van driven by a servant

of the defendants on the 22nd April, 1960. As a result of the accident he has been unable to do any gainful work.

The defendants, though admitting negligence, deny liability on the ground that the plaintiff has recovered compensation payable under the Workmen's Compensation Ordinance (Cap. 157) and is therefore not entitled to recover against the defendants the damages he claims in this action.

The relevant section of the Workmen's Compensation Ordinance is section 20(a) which provides as follows:—

"20. Where any injury for which compensation is payable under this Ordinance was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

(a) the workman may take proceedings against that person to recover damages and may claim against any person liable to pay compensation under this Ordinance, but he shall not be entitled to recover both damages and compensation;"

The plaintiff's evidence is that he was at the time of the accident employed by a person known as Lai Thow of Johore Bahru and had been so employed by him for about four months before the accident to carry logs of timber for delivery to various sawmills in Singapore. It is admitted that the lorry driven by the plaintiff was registered in the name of Kwong Maw Sawmill Company Ltd. As a result of the accident he was hospitalised and whenever he needed money he would ask his employer who lent him in all a sum amounting to approximately $600. These loans averaged about $50 a month and they were made because he was unable to work as a result of this accident and needed money for food for himself and his family.

He admits having signed a document purporting to be an acknowledgment by him of the prior receipt of 13 fortnightly instalments of $65 each totalling $780 as workmen's compensation payable to him by Kwong Maw Sawmill Co. Ltd. as his employer. This document is dated 19th December, 1960 and according to it payment of the fortnightly instalments commenced on the 6th May, 1960 and continued at 15-day intervals until the 18th October, 1960. The document is partly printed and partly typewritten and although against the printed words "Translated and explained to the above" are the type-written words "by Loh Poh Lok" the undisputed evidence is that this person did not translate or explain the contents of the documents to the plaintiff.

The plaintiff denies that he ever received any fortnightly payments of $65 each from Kwong Maw Sawmill Co. Ltd. or from Lai Thow.

I accept this evidence as also the plaintiff's evidence that it was Lai Thow who brought the document to him and requested him to put his signatures thereto without its contents being translated to him. I accordingly find that not knowing the nature and effect of this document there is no evidence that the moneys he received from Lai Thow were received by him as workmen's compensation payments. I also find that there is no evidence that the plaintiff's employer was Kwong Maw Sawmill Co. Ltd. In fact there is abundant evidence that his employer was Lai Thow.

It is therefore unnecessary for me to deal with the point raised at the trial whether or not partial recovery of workmen's compensation is a bar to recovery of damages against a third party. However, in view of the full arguments addressed to me by both counsel I think it desirable that I should express my views on this aspect of the matter. I have already set out section 20(a) of the Workmen's Compensation Ordinance which is identical with the provisions of section 30(1) of the English Workmen's Compensation Act, 1925.

Counsel for the plaintiff relies on the case of *Day* v. *Furnival & Co. Ltd. & Anor.* [1] where Devlin J., (as he then was) — after an exhaustive survey of the authorities, having come to the conclusion that section 30 of the English Act postponed but did not avoid the parting of the ways, then went on to consider at what point the parting arose, whether at the beginning or at the end of the process of recovery. He held that the word "recover" in section 30 should be construed as recover as a whole and not in part as being a construction which is open on the language.

On the other hand, counsel for the defendants relies on the earlier Scottish cases of *Aldin* v. *Stewart* [2] and *Reid* v. *Stevenston* [3] and the Australian case of *Smith* v. *The Commonwealth Oil Refineries Ltd.* [4]. In all these cases it was held that partial recovery of workmen's compensation amounts to a recovery of compensation even if the full amount which the worker is to receive under the relevant Acts has not been paid and that accordingly the workman is debarred from recovering damages.

I prefer to accept the reasoning of Devlin J. and to hold that the word "recover" in section 20 of our Ordinance should be construed as recover as a whole and not in part.

I turn now to the more difficult question of the quantum of damages. The plaintiff was at the time of the accident 52 years old and the injuries he suffered were extremely serious, in particular the injury to his liver. The evidence of Dr. Levy who operated on the plaintiff is

that this was the most serious injury of the liver he had ever operated and that the plaintiff was lucky to survive and be still alive. According to Dr. Levy, as a result of this injury he can only do the lightest of light work and his energy to do anything — even walking or eating — is very much less than it normally would be. The effect of this injury is that he is permanently incapable of working and is a mere shadow of a man. Taking into account the other injuries, which were in themselves serious such as some broken ribs and a fractured right tibia, the plaintiff must have undergone a lot of pain and suffering.

I have therefore to award what I consider is proper compensation for a man of 52 at the time of the accident who, as a result of the accident, has undergone a lot of pain and suffering, is now unemployable and has lost every single pleasure that human life can give. I would award him as general damages the sum of $35,000.

As regards special damage, for loss of earnings up to date I find the plaintiff is entitled to the sum of $5,200 to which sum must be added the sum of $32 claimed as transport to and from hospital.

There will therefore be judgment for the plaintiff for $40,232 and costs.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; Braddell Bros.*

LEE CHENG OO & ORS. v. CHINA INSURANCE CO. LTD.

[O.C.J. (Suffian J.) July 4, 1962]

[K.L. — Civil Suit No. 499 of 1961]

Insurance — Cancellation of policy — Premium paid to canvasser for authorised agent — Accident to vehicle.

The plaintiffs, timber merchants, bought a lorry on hire-purchase from Orchard Motors through one L, the latter's Assistant Sales Manager. L then, saying that he was an agent of the defendants, got the managing partner of the timber merchants to agree to take out a policy with the defendants. The usual proposal form of the defendants, the completion of which was the prerequisite to the issue of a policy by them was not produced at the trial and the managing partner of the plaintiffs, who knew no English, could not remember if he filled in and signed such a form. L informed one C, an authorised agent of the defendant company, of the managing partner's intention to insure the lorry with the defendants. Sometime later a formal policy was issued through C to L to the managing partner. The managing partner had no contact with C or anybody in the defendant company. Subsequently, the defendants wrote to the plaintiffs on May 3, 1961 stating that the premium in respect of the policy was overdue and that unless the premium was paid within seven days the policy would be cancelled. The plaintiffs' managing partner did not send the company the amount stated (as this had already been paid to L) on May 11, 1961 the company cancelled the policy. The plaintiffs wrote to them on May 18, 1961 stating that unless the *pro rata* rebate due on cancellation under condition 7 of the policy was returned, the letter of May 3, 1961 had no effect. This letter also stated that the premium had been paid to L. The defendants received this letter on May 19, 1961. On May 18, 1961 the lorry was involved in an accident from which it emerged almost a total wreck. On the question arising whether or not the policy was in force at the time of the accident on May 18, 1961,

Held: as C had no authority to appoint L as the company's agent or sub-agent, payment by the plaintiffs to L was not payment to the company, following *Attorney-General for Ceylon* v. *A.D. Silva* (1), therefore the cancellation of the policy by the defendants' manager on the plaintiffs' failure to remit the premium seven days after the letter of May 3, 1961 was valid and the policy was effectively cancelled.

Case referred to:—

(1) *Attorney-General for Ceylon* v. *A.D. Silva* [1953] A.C. 461, 479.

The following authorities were also cited in argument: *MacGillivray* on Insurance Law, 5th Edn., Vol. I, p. 744; Vol. II p. 1981; Contracts (Malay States) Ordinance 14 of 1950, ss.143, 144, 146, 188; *Halsbury's* Laws, 3rd Edn. vol. 22, paras. 382, 474; *Sarkar* on Evidence, 10th Edn., p. 809, last paragraph; *Powell* on Law of Agency, 1951 Edn. p. 248; *Bowstead* on Agency, 12th Edn. article 41; *William Mackersy* v. *Ramsays, Bonars & Co.* 8 E.R. 628; *Matthews* v. *Haydon Gent* 170 E.R. 437; *Sun Fire Office* v. *Hart* (1889) 14 App. Cas. 98, 100; *Lee Beng Choon* v. *Tan Ngiap Kee*, p. 315, *post.*

CIVIL SUIT.

Henry Cheah for the plaintiffs.

E. C. Khoo for the defendants.

Cur. Adv. Vult.

Suffian J.: Five persons carrying on business as timber merchants bought a lorry BG 1151 on hire-purchase from Orchard Motors through Loke, the latter's assistant sales manager. He had authority from Orchard Motors to help their customers to effect insurance on their vehicles. He brought up with P.W.1, the timber merchants' managing partner, the question of insuring this lorry, saying that he was an agent of the defendant company and that P.W.1 could take out a policy with the company through him. P.W.1 agreed to take out a policy with the company.

Before the defendant company issue a policy they insist on the insured filling in, signing and submitting a proposal form which is the basis of the contract with the insured. The proposal form in this case has not been produced. P.W.1 does not remember if he filled in and signed such a form. If filled in in English which he cannot read or write, he could not have done it himself. His counsel suggested that probably it was signed by Loke, as was D.8 the proposal form in respect of BG 395, another lorry belonging to the plaintiffs and also insured with the defendant company.

Loke informed Chen, P.W.5, an authorised agent of the defendant company, of P.W.1's decision to insure with them. Chen had authority to issue and at once issued the cover note P.2.

On 17th April, 1961, the company issued a formal policy P.3. They gave it to Chen, who gave it to Loke, who gave it to P.W.1.

P.W.1 never saw Chen or anybody in the defendant company; throughout he dealt only with Loke.